

**COMMITTEE ON INFRASTRUCTURE & PUBLIC LANDS  
WOBURN CITY HALL  
CITY COUNCIL CHAMBER  
SEPTEMBER 28, 2020 at 6:04 p.m.**

Voting Members present: Chairman Richard Gately, Alderman Joanne Campbell,  
Alderman Darlene Mercer-Bruen, Alderman Robert Ferullo, and Alderman Jeffrey Dillon

Non-Voting Members present: Alderman Michael Concannon, President Lindsay Higgins,  
Alderman Joseph Demers, and Alderman Edward Tedesco

\* \* \* \* \*

VOTED to dispense with the reading of the minutes from the meeting of October 21, 2019, and to approve, all in favor, 5-0.

\* \* \* \* \*

**Petition to accept Tower Office Park Drive as a public way:** Representing the petitioners were Attorney Joseph R. Tarby III, Murtha Cullina, 600 Unicorn Park Drive, Suite 7, Woburn, MA, Timothy Williams, Allen & Major, 100 Commerce Way, Woburn, MA; and F. Giles Ham, Vanasse & Associates, 35 New England Business Center Drive, Andover, MA. Chairman Gately said a petition has been filed to accept Tower Office Park Drive as a public way under the conditions in 1983. He said the City Solicitor will not attend tonight's meeting. Motion made by Alderman Mercer-Bruen and seconded by Alderman Campbell to accept the following documents and make them part of the permanent record: A memorandum from City Solicitor Ellen Callahan Doucette dated July 14, 2014; a memorandum from City Solicitor Ellen Callahan Doucette dated July 13, 2015; a memorandum from City Solicitor Ellen Callahan Doucette dated January 17, 2019; a memorandum from the Woburn Planning Board dated July 22, 2020; a memorandum from various city officials including the department heads/chiefs of the Woburn Fire Dept., the Woburn Police Dept., the Dept. of Public Works Water Division, the City Engineer Dept., Board of Health and the Conservation Commission dated February 27, 2019; and a memorandum from City Engineer John Corey dated June 10, 2020; approved, 5-0. Attorney Tarby said a petition was filed by 10 residents to accept Tower Office Park Drive as a public way. He said the street was accepted by the City Council 37 years ago but due to an error it was never recorded properly. He said he wants to get into the facts and said it is important to review the history of the property. Motion made by Alderman Mercer-Bruen and seconded by Alderman Dillon to receive the make part of the permanent record a memorandum from Attorney Tarby dated July 23, 2020, regarding a petition for the acceptance of a public way; approved, 5-0. Attorney Tarby said in 1983 the city's Zoning Board of Appeals granted a variance to Beltway LLC to allow frontage for 395 Washington Street along Tower Office Park Drive. He said the City Solicitor wrote a memo indicating the City Council at the time did not follow all the required steps to make Tower Office Park Drive a public way. He said there was a petition filed in accordance with Section 12.5(a)(b) of the Municipal Code on June 15, 2020, by 10 taxpayers to accept Tower Office Park Drive as a public way. He said the petition was referred to this committee and the Planning Board for a public hearing. He said the Planning Board forwarded a

recommendation to the City Council. He said this committee has to take a vote and forward it to the City Council. He said there has to be a public hearing and notice given to abutters. He said prior to 1983 the roadway was co-owned by William and Joyce Cummings and the ownership of Crest Buick-Datsun. He said the road was laid out as a public way and there was a land-taking that was recorded at the Registry of Deeds. He said Tower Office Park Drive is subsequently shown on an ANR plan. He said an order indicates there were two parcels, which were taken for public highway purposes. He said \$1 was paid to the owner of Parcel A, and \$21,000 was paid to the owner of Parcel B. He said Mayor Thomas Higgins had requested at the time the Tower Office Park Drive be reconfigured to align with the ramps to Route 128 North. He said Tower Office Park Drive originally went straight down to Washington Street. He said there had to be land-takings to accommodate Mayor Higgins' request. He said the land-takings were friendly. He said Tower Office Park Drive is currently set up to be opposite the on and off-ramps to the highway. He said after that Tower Office Park Drive was thought to be a public way and it was used as an entrance to W.R. Grace and Crest Buick. He said in 1999 a variance was issued to Cummings Properties for a reduction in frontage along Tower Office Park Drive. He said lenders gave mortgages based on the premise Tower Office Park Drive was a public way. He said when the City Solicitor opined Tower Office Park Drive had not been accepted, the city granted an easement until the street was formally accepted. He said in 2014, Madison Properties requested a meeting to present its proposal for the W.R. Grace site and the City Solicitor was asked to look into the status of Tower Office Park Drive as a public way. She reported the City Council failed to follow proper procedures in 1983. He said in 2014, the City Solicitor reported that although there was an intent to accept Tower Office Park Drive as a public way, proper procedure was not followed. He said in 2015 the City Solicitor issued a subsequent memo reiterating the position Tower Office Park Drive is not a public way. He said in the fall of 2018, he represented a potential purchaser of the Crest Buick site and met with Building Commissioner Thomas Quinn. He said there needs to be a curb cut and it is important Tower Office Park Drive be made a public way. He said the Zoning Ordinance requires access via legal street frontage, and it is highly-doubtful MassDOT will allow a curb cut along Washington Street. He said 399 Washington Street is an unbuildable lot unless Tower Office Park Drive is accepted as a public way. He said the attorney for 399 Washington LLC could not attend tonight's meeting. He said the lot cannot be developed. He said 399 Washington LLC is paying taxes and probably should ask for an abatement. Mr. Williams offered a Power Point presentation on the screen in the chamber. He showed an aerial photo of Tower Officer Park Drive with the improvements that were made by the developer of Woburn Landing. He said in 1982 there is a plan that indicates Parcel A is 23,000-square-feet. He said the plan indicates Parcel B is 8,600-square-feet. He said both parcels were conveyed to the city to create a right of way for the Woburn Landing project. He said Washington Street was modified. He said there were two 12-foot lanes created from Tower Office Park Drive to the Woburn Landing curb cut. He said drainage was modified. He said striping was enhanced. He said parking along Tower Office Park Drive was eliminated. He said Cummings has 100 feet of frontage and has requested an increase to 125 feet. He said this will involve the transfer of a small piece of land that is owned by the city. He said they would have to go back to Beltway LLC to get their frontage. Chairman Gately asked if anyone on the committee wants to comment on the proposal. Alderman Mercer-Bruen said Tower Office Park is a substandard street. She said the council cannot accept it the way it is. She said she understand the position of 399 Washington LLC principal Nai Ko, but she is struggling with the notion this is the first time he has been represented before the council in this matter. She said the

council is under no legal obligation to accept Tower Office Park Drive as a public way. She said the council is responsible for ensuring all the city's roads are up to standards. She said the council has not heard from Mr. Ko for years. She asked what is going on with 399 Washington Street. Attorney Tarby said Mr. Ko is trying to sell the land and he has an interested buyer. Alderman Mercer-Bruen said there is a long list of things that have to take place before Tower Office Park Drive is accepted as a public way. She said there is an actual list and those things ought to take place before that happens. She said the council has to look at the entire picture. Attorney Tarby asked Mr. Ham to comment on whether there is any way for the creation of access to 399 Washington Street without approval from MassDOT. Mr. Ham said anything that goes in there will require a permit from MassDOT. He said there is a lengthy approval process before any development can occur. Alderman Mercer-Bruen said she wants to inquire with Paul Steadman of MassDOT to confirm MassDOT will have oversight of access to 399 Washington Street before the parcel is developed. Motion made by Alderman Mercer-Bruen and seconded by Alderman Campbell to send a communication to Mr. Steadman inquiring whether the property owner will be responsible for obtaining a MassDOT permit prior to development of 399 Washington Street, regardless of where the frontage is, and whether review by MassDOT will trigger an approval process by the Massachusetts Environmental Policy Act office; approved, 5-0. Attorney Tarby said Mr. Ko was not aware this was not a public way. Alderman Mercer-Bruen said Mr. Ko has been marketing the property. Attorney Tarby said this issue didn't come up until he met with Commissioner Quinn and he said Tower Office Park Drive needs to be made a public way. He said the City Solicitor has opined recently that the City Council did not follow proper procedure in 1983. He said there was an impression that Tower Office Park Drive was already a public way. Alderman Mercer-Bruen said Tower Office Park Drive has been plowed and maintained privately. Attorney Tarby said that is no uncommon. He said his office is on Unicorn Park Drive, which is also a public way but maintained privately. Alderman Mercer-Bruen said that is surprising. Attorney Tarby said the intent is to correct a mistake from 1983. He said no bank is going to loan money to a buyer if Tower Office Park Drive is not a public way. Alderman Mercer-Bruen asked if Attorney Tarby is suggesting there would be a fix through mitigation. Attorney Tarby said the developer of 399 Washington Street would have to perform mitigation. Alderman Mercer-Bruen said this seems like a chicken or the egg situation. She said what happens if the property owner does something that is allowed by right. She asked if Attorney Tarby is suggesting the council will have to pre-screen a special permit. Attorney Tarby said the council has the option of denying the special permit. Alderman Mercer-Bruen said she thinks there is a way to have a meeting of the minds. She said the council is responsible to the taxpayers of 2020, regardless of what was done in 1983. She said she does not want the burden to be on the taxpayers. Attorney Tarby said he agrees. Alderman Mercer-Bruen said Tower Office Park Drive is a substandard street and there might be some Ch. 90 requirements involved. She said this is a bigger issue than dotting a few I's and crossing a few T's. She said it is unfortunate the City Council didn't get it right in 1983, but the present council can't afford to roll the dice and see how it works out. She said her recommendation would be to keep the matter in committee until MassDOT responds to the inquiry about the frontage issue and whether there is a MEPA trigger. Motion made by Alderman Mercer-Bruen to send a communication to City Engineer John Corey asking him if Tower Office Park Drive is accepted as is, would it qualify for Ch. 90 funding; approved, 5-0. Motion made by Alderman Mercer-Bruen and seconded by Alderman Campbell to allow members of the council not on the committee to address the petition; approved, 5-0. Alderman Concannon said he wants to make sure he has the facts

correct. He asked if the City Council's intent in 1983 was to accept Tower Office Park Drive as a public way. He said he does not think there is any evidence otherwise. He said the council didn't get it right, though. He said the council is now being asked whether to apply the standard from 1983, or today. He said if the council were to accept Tower Office Park Drive as a public way, it would be a substandard roadway. He said the council is in a tough spot. He said if there is a way to bring the roadway closer to standards, he would consider that. He said it is otherwise hard for him to be in favor of accepting a substandard roadway. Motion made by Alderman Mercer-Bruen and seconded by Alderman Dillon to return to the regular order of business; approved, 5-0. Chairman Gately said he would like to speak on the issue. He said there have to be something like 180 substandard streets in the city. He said a lot of them were built in East Woburn back when there were more open spaces. He said he does not think it would be in the best interests of the city to accept a substandard street. He said the council is willing to work with property owners, but it is important to make this a standard road. He said the other thing he is worried about is whether the council will give Mr. Cummings the 125-feet of frontage he needs to allow him to put in more buildings. He said whatever goes into 399 Washington Street will have a huge impact on traffic. He said the council needs to be careful what it gives up. He said the council needs to make sure the utilities are adequate long before it makes its decision. He said he would prefer to leave the matter in committee. He said there is a lot more work that needs to be done. Alderman Campbell said she understands Mr. Ko's position and she would like to help him. She said her concern is if he puts something in there by right, the street may not be taken care of. She said right now traffic is moving beautifully on Washington Street but if something large goes into that spot, it could impact traffic. She said she thinks it is a good thing to get some questions answered before the committee proceeds. Attorney Tarby said the City Engineer's memo states the right of way width is a variable 60 feet and the minimum required width is 40 feet. He said the curbing and striping on Tower Office Park Drive can be addressed. He said if there is a development, the road will have to be widened. He said those issues can be addressed during the special permit process. He said on-street parking has already been eliminated. He said there is a speed bump that can be removed. He said there is an existing sewer system and a water easement. Alderman Mercer-Bruen said she remains concerned putting the council's eggs into the special permit basket predisposes it to approve something. Attorney Tarby said he wants to restate that no bank is going to loan any money to a prospective buyer without the acceptance of the roadway as a public way. Alderman Mercer-Bruen said she thinks that's a great reason for Mr. Ko to come to the table. Chairman Gately said the matter will remain in committee.

\* \* \* \* \*

Motion made by Alderman Mercer-Bruen and seconded by Alderman Dillon to adjourn, 5-0. Chairman Gately adjourned the meeting at 6:55 p.m.

A TRUE RECORD ATTEST

---

Gordon Vincent  
Clerk of Committees